UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 2 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Consent Agreement and Proposed Final Order; *In the Matter of H&S Performance, LLC,* Docket No. CAA-HQ-2015-8248

FROM: Susan Shinkman, Director
Office of Civil Enforcement

TO: Environmental Appeals Board

Attached for your ratification and issuance is a Consent Agreement and proposed Final Order (CAFO) to settle the above-referenced enforcement action regarding violations of Title II of the Clean Air Act (CAA or Act), 42 U.S.C. §§ 7521–7554, particularly the prohibitions of section 203(a)(3)(B), 42 U.S.C. §§ 7522(a)(3)(B). The CAFO is enclosed herein as Attachment A.

Phillip A. Brooks, Director of the Air Enforcement Division (AED) of the Office of Civil Enforcement (OCE) of the Office of Enforcement and Compliance Assurance (OECA), signed this CAFO on behalf of the United States Environmental Protection Agency (EPA), and a representative of H&S Performance, LLC (Respondent), signed this CAFO on behalf of the Respondent. The parties have agreed to settle all causes of action before further court proceedings. Therefore, this proceeding will be concluded before filing of an answer if and when the Environmental Appeals Board (EAB) ratifies the Consent Agreement and issues the Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b)(2)–(3).

This memorandum is submitted in accordance with the *Environmental Appeals Board Consent Agreement and Final Order Procedures* (January 2014 version), which provide that the OCE Director or Acting Director may transmit Consent Agreements and proposed Final Orders directly to the EAB. As discussed in this memorandum, I have determined that the Consent Agreement would serve the public interest and would comport with the CAA, applicable

regulations, and EPA policy. If ratified, the CAFO would assess a civil penalty of $1,000,000 against Respondent for the alleged violations.

Background

Governing Law

EPA alleges that Respondent manufactured and sold performance tuners, exhaust replacement pipes and exhaust gas recirculation delete kits (collectively Defeat Devices) that have the effect of altering an engine's fueling strategy or mechanically bypassing motor vehicle emissions controls.

Title II of the Act establishes various standards governing emissions from motor vehicles. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity (COC). The EPA issues COCs to vehicle manufacturers pursuant to section 206(a) of the Act, 42 U.S.C. § 7525(a), to certify that a particular class of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions. Every model of motor vehicles introduced into commerce in the United States must have a COC; each COC is valid for only one model year of production.

Section 203(a)(1), 42 U.S.C. § 7522(a)(1), states:

> The following acts and the causing thereof are prohibited–
>
> (1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines ... the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce ... of any new motor vehicle or new motor vehicle engine ... unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part ....

Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), prohibits the sale of devices that defeat the functioning of emissions control devices or elements of design installed on motor vehicles. Section 203(a)(3)(B) states:

> The following acts and the causing thereof are prohibited–
>
> (B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use...

Section 202(m) of the Act, 42 U.S.C. § 7521(m), requires the EPA Administrator to promulgate regulations requiring the installation in motor vehicles of on-board diagnostic (OBD) systems that are capable of: (1) detecting deterioration in the functioning of emissions-related systems such as catalytic converters and diesel particulate filters; (2) alerting the vehicle's operator of the need for repair of such systems; and (3) providing storage of, and access to, fault codes that have arisen concerning these systems.

Section 202(m), 42 U.S.C. § 7521(m), of the Act states:

> . . .the Administrator shall promulgate regulations under subsection (a) of this section requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of–
>
> (A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,
>
> (B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,
>
> (C) storing and retrieving fault codes specified by the Administrator, and
>
> (D) providing access to stored information in a manner specified by the Administrator.

While these requirements speak only to light duty vehicles and light duty trucks, CAA § 202(m)(1) provides that "[t]he Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines." In October 2000, the EPA did promulgate regulations to require OBD systems in heavy-duty vehicles and engines, including diesel, up to 14,000 pounds gross vehicle weight (GVWR). *See* 65 Fed. Reg. 59,896 (October 6, 2000); *see also* 40 C.F.R §§ 86-005-17 and 86.1806-05. The regulations at 40 C.F.R. §§ 86.005-1 through 86.007-38, and §§ 86.1801 through 86.1864-10, contain the applicable emission control standards for heavy-duty vehicles with a GVWR of 8,500 to 14,000 pounds. This category of heavy-duty vehicles encompasses vehicles as small as large full-size pickup trucks and as large as commercial trucks, and includes all the vehicles for which Respondent's products were designed. The emission control technologies that are commonly installed and operated on motor vehicles for compliance with Title II regulations are diesel particulate filters (DPF), selective catalyst reduction (SCR), exhaust gas recirculation (EGR), and OBD systems.

Respondent

The Respondent to this Consent Agreement is H&S Performance, LLC (H&S). H&S, based in St. George, Utah, was a high volume purveyor of performance tuners and other performance products designed for use with heavy-duty diesel trucks manufactured by Dodge, Ford and General Motors. Respondent is a limited liability corporation organized under the laws of the State of Utah with an office at 4160 South River Road, Saint George, Utah 84790.

Violations Settled by the Consent Agreement

The violations involve the manufacture, offering for sale, and sale of 114,436 Defeat Devices by Respondent between January 2010 and June 2013. Respondent's products interfere with the proper operation of the engine fueling, DPF, SCR, EGR, and OBD systems of vehicles, which are required elements of design in accordance with Title II of the CAA, the EPA's regulations at 40 C.F.R. Part 86, and the applicable COCs issued by the EPA.

EPA investigated Respondent's operations through Requests for Information issued pursuant to section 208 of the Act, 42 U.S.C. § 7542, on July 20, 2011, and March 14, 2013, and deposition testimony obtained pursuant to EPA's administrative subpoena authority, section 307 of the Act, 42 U.S.C. § 7607(a). Respondent responded to the Requests for Information on August 20, 2011, and April 8, 2013, and provided additional responsive information on November 29, 2012, and June 14, 2013. The requests primarily sought information from Respondent to determine whether Respondent installed, sold, offered for sale, or manufactured any parts or devices that could be used to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, and, if so, the type and quantity of such products installed, sold, offered for sale, or manufactured by Respondent. Respondent also provided additional information regarding product documentation, company organization documents, and marketing information such as advertisements for the products. On May 30, 2012, the EPA issued a Notice of Violation (NOV) to Respondent for violations of the defeat device prohibition of the Act, section 203(a)(3)(B). Based on the written and e-mailed information submitted by Respondent, EPA has determined that Respondent manufactured 86,295 performance tuners (73,955 sold and 12,340 additional manufactured); sold 73,953 performance tuners (73,955 minus 2 bought by the EPA) to individuals or dealers; sold 9,695 exhaust replacement pipes to individuals or dealers; and sold 18,448 EGR delete kits to individuals or dealers.

Respondent's responses are arguably complete, and satisfactorily establish defeat device claims for approximately 114,436 Defeat Devices, except for the element that Respondent knew or should have known that these Defeat Devices were sold and installed to bypass, defeat or render inoperative emission control systems on motor vehicle engines. *See* section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B). On March 9 and 10, 2015, Messrs. Hugie and Shirts were deposed in Salt Lake City, Utah, to assess whether Respondent knew or should have known that its Defeat Devices were being used on motor vehicle engines. Based on their sworn testimony, it is indisputable that Respondent knew or should have known that its Defeat Devices were being used on motor vehicle engines. EPA also became aware that Respondent's license with its hardware and software supplier had been involuntarily terminated in approximately 2014 and Respondent no longer had access to the hardware and software used in their Defeat Devices.

Respondent has terminated all Defeat Device operations except for specialized high-sulfur applications that are not relevant to this matter.

Civil Penalty

In determining civil penalties, the CAA requires that the EPA consider "the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require." CAA Section 205(c)(2), 42 U.S.C. § 7524(c)(2); *see also* 40 C.F.R. §§ 1068.125(a)(1), (b)(1) (listing these same factors). AED uses a penalty policy that incorporates these statutory factors and calculates civil penalties for specific cases. CAA Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements (Jan. 16, 2009) (Penalty Policy), *available at* http://www2.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf.

The Penalty Policy provides for calculation of civil penalties as follows. First, the Penalty Policy requires the calculation of the *preliminary deterrence amount*. This is the sum of the *economic benefit* and the *gravity*. The economic benefit is based on the vehicle power; the rule of thumb for calculating the per-vehicle economic benefit is $1 per unit of horsepower, but no less than $15 per vehicle.[1] To determine the gravity component, a base gravity figure is calculated according to horsepower, then multiplied to reflect egregiousness (using a factor of 1 for minor violations, 3.25 for moderate violations, or 6.5 for major violations), scaled down according to the number of vehicles, and adjusted to reflect business size. Second, the Penalty Policy requires the calculation of the *initial penalty target figure*. This figure is the preliminary deterrence amount, but with the gravity component adjusted to reflect the violator's degree of willfulness or negligence, degree of cooperation or non-cooperation, and history of noncompliance. Finally, the initial penalty target figure can be adjusted to account for litigation risk and other unique factors.

Under the Consent Agreement, Respondent will pay a civil penalty of $1,000,000. The civil penalty comports with the CAA statutory guidelines and the Penalty Policy. Ultimately, the final civil penalty was entirely determined by Respondent's ability to pay, as EPA would otherwise have sought a substantially higher penalty.

Preliminary Deterrence Amount

Here, the preliminary deterrence amount is $7,934,130. As discussed further below, the economic benefit portion of this amount is $1,716,540, and the gravity component is $6,217,590, of which the gravity adjustment for business size is $20,000.

[1] Violations of the defeat device prohibition are explicitly addressed by the Penalty Policy. *See* Penalty Policy at 22. The gravity portion of the penalty is based on the horsepower of the vehicles on which the defeat devices were installed.

A. Economic Benefit

EPA may calculate the economic benefit component by at least two methods, both of which are consistent with the Penalty Policy. For mobile source violations not involving uncertified vehicles or engines, the Penalty Policy recommends the development of a method for calculating the economic benefit using the general considerations of delayed cost, avoided cost, and benefit from "BBB" on a case-by-case basis. The term "BBB" means "beyond BEN benefit," and includes the benefits to the violator from business transactions that would not have occurred but for illegal conduct, or the competitive advantage the violator obtained in the marketplace compared to companies that have complied with the motor vehicle emission controls laws and regulations. For purposes of this penalty analysis, EPA could assume a $200 gross profit per product, based on the Respondent's deposition testimony, although EPA does not have comprehensive information regarding this estimate given the numerous retail outlets for Respondent's Defeat Devices. On this basis, one estimate of economic benefit from Respondent's sale of Defeat Devices is 114,436 products x $200/product, or $22,887,200. However, EPA lacks comprehensive information to precisely quantify the economic benefit gained from each Defeat Device sold by Respondent. Alternatively, the EPA could calculate the economic benefit component using the Penalty Policy's conservative rule of thumb of $15 per device. On this basis, the estimated economic benefit is 114,436 products x $15/product, or $1,716,540. For reasons cited below, based primarily on the fact that Respondent's business is defunct, the EPA has determined that Respondent is unable to pay even this conservative estimate of economic benefit.

B. Gravity

The gravity component of the preliminary deterrence amount in this case is $6,217,590. This is the sum of the penalty related to Respondent's business size, which was approximately $4.2 million over a five-year period ($20,000), and the penalty on a per-product basis of $23,400 (described below), adjusted for the scaling factors in the Penalty Policy that reflect the total number of vehicles at issue (114,436).

For violations of the mobile source requirements for vehicles and engines, the actual or potential harm is strongly correlated to the number of violative vehicles or engines and the amount of excess emissions that will be emitted from each vehicle or engine over the vehicle's or engine's useful life as a result of the operation of defeat devices. The Penalty Policy thus provides a base per-vehicle/engine penalty, scaled for engine horsepower, although EPA retains discretion regarding the application of the scaling methodology. According to the Penalty Policy, $80 is assessed for the first 10 horsepower of the engine; $20 is assessed for the next 90 horsepower; and $5 is assessed for the next 900 horsepower. In this case, Respondent's products were marketed for installation on Dodge, Ford, and GM diesel trucks with engines ranging in size from 5.9 to 6.7 liters. For purposes of the calculation, an approximation of 300 horsepower was used for the vehicles affected by the products. Accordingly, $800 was assessed for the first 10 engine horsepower ($80 × 10); $1,800 was assessed for the next 90 horsepower ($20 × 90); and $1,000 was assessed for the remaining 200 engine horsepower ($5 × 200). All three values were added to arrive at the per-product base penalty of $3,600 ($800 + $1,800 + $1,000).

The Penalty Policy adjusts the per-product base penalty to reflect the egregiousness of the violation. Violations involving the manufacture, sale, or offer for sale of defeat devices are highly likely to result in excess emissions and therefore fall under the "major" category of egregiousness, as described in the Penalty Policy. For the major category of egregiousness, the adjustment multiplier is 6.5. *See* Penalty Policy at 17. Thus, for the products that were offered for sale and sold, the per-product base penalty of $3,600 was multiplied by an adjustment multiplier of 6.5 to arrive at $23,400. Through application of the scaling factors, the adjusted per-vehicle base penalty is multiplied by 1.0 for the first ten vehicles; 0.2 for the next 90 vehicles; 0.04 for the next 900 vehicles; 0.008 for the next 9,000 vehicles; 0.0016 for the next 90,000 vehicles; and 0.00032 for the remaining vehicles. All the values are added to arrive at the final base penalty for the total number of vehicles at issue (114,436).

Initial Penalty Target Figure

Under the Penalty Policy, the initial penalty target figure is the preliminary deterrence amount (here $6,197,590 (gravity) + $20,000 (gravity adjustment for business size) + $1,716,540 (economic benefit) = $7,934,130), which could be adjusted to reflect the violator's degree of willfulness or negligence, degree of cooperation or non-cooperation, and history of noncompliance. EPA did not adjust the initial penalty target figure for these factors, given the deposition testimony and documents obtained pursuant to the administrative subpoena indicating that Respondent's business was defunct and minimal funds were available for the penalty.

Final Penalty Amount

Under the Penalty Policy, the initial penalty target figure can be adjusted to account for litigation risk, other unique factors, and inability to pay, and thereby yield the final penalty. EPA and EPA's contractor reviewed Respondent's financial records (Quickbooks format) to assess funds available for a penalty. EPA reviewed several insurance policies and spoke with representatives of Respondent's captive insurance companies to assess the funds available for a civil penalty from captive insurance investment vehicles. Initially, EPA believed that significant funds were available from the Respondent, but later learned that 50% of the captive insurance investment funds were directed to irrevocable trusts for the benefit of family members of the H&S principals. Funds available for the EPA civil penalty were reduced by a $1,000,000 civil penalty paid in a separate settlement with the California Air Resources Board (ARB) related to defeat devices. This August 6, 2014 settlement enjoined Respondent from offering Defeat Devices for sale or use in California that have not been certified or exempted by ARB.

The Penalty Policy provides that EPA will not normally request penalties that are clearly beyond the means of the violator. EPA has determined that the company has minimal remaining funds; therefore, the penalty was ultimately reduced to $1,000,000 after extensive negotiations. Because Respondent must sell assets, including business property, and follow State of Delaware insurance regulations for liquidating captive insurance funds, Respondent is unable to pay the penalty in full within 30 calendar days following issuance of the proposed Final Order. Pursuant to Paragraph 43 of this CAFO, any civil penalty not paid in full within 30 calendar days following the issuance of the proposed Final Order will include interest at rates established pursuant to 26 U.S.C. § 6621(a)(2).

Release

As specified in the Consent Agreement, completion with the terms of the Consent Agreement will resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the Consent Agreement. *See* proposed CAFO ¶ 47. EPA covenants not to sue the Respondent for injunctive relief for the violations and facts alleged in the Consent Agreement, but this covenant automatically terminates if Respondent fails to complete all conditions specified in Paragraph 45 of the Consent Agreement. *See* proposed CAFO ¶ 48.

Environmental Appeals Board Jurisdiction

The Environmental Appeals Board is authorized to ratify consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. *See* EPA Delegation 7-41-C; 40 C.F.R. § 22.4(a)(1). Thus, by ratifying the Consent Agreement and issuing the Final Order, the EAB would be memorizing the settlement between EPA and Respondent and would be ordering Respondent to pay the proposed civil penalty.

Human Health and Environmental Concerns Presented by Respondent's Actions

The CAA aims to reduce emissions from mobile sources of air pollution, including carbon monoxide (CO), oxides of nitrogen (NOx), and non-methane hydrocarbons (NMHC) (subject pollutants). *Mobile sources* is a term used to describe a wide variety of vehicles, engines, and equipment that generate air pollution and that move, or can be moved, from place to place. Mobile sources of air pollution contribute approximately 73% of the nation's carbon monoxide emissions and 58% of the nation's oxides of nitrogen emissions.

The subject pollutants pose significant health and environmental concerns. Carbon monoxide is a poisonous gas that forms when carbon in fuel does not burn completely. Carbon monoxide is harmful because it reduces oxygen delivery to the body's organs and tissues. It is most harmful to those who suffer from heart and respiratory disease. High carbon monoxide pollution levels also affect healthy people. Symptoms may include visual impairment, headache, and reduced work capacity. In addition, oxides of nitrogen form when fuel burns at high temperatures. Oxides of nitrogen can travel long distances, causing a variety of health and environmental problems in locations far from their emissions source. These problems include ozone and smog. Oxides of nitrogen also contribute to the formation of particulate matter (PM) through chemical reactions in the atmosphere, and particulate matter can cause asthma, difficult or painful breathing, and chronic bronchitis, especially in children and the elderly. Finally, hydrocarbon emissions result from incomplete fuel combustion and fuel evaporation. Hydrocarbons are a precursor to ground-level ozone, a serious air pollutant in cities across the United States. Ground-level ozone, a key component of smog, is formed by reactions involving hydrocarbons and oxides of nitrogen in the presence of sunlight. Ground-level ozone causes health problems such as difficulty breathing, lung damage, and reduced cardiovascular functioning. A number of hydrocarbons are also considered toxic, meaning they can cause cancer or other health problems.

To assess the environmental harm caused by Respondent's Defeat Devices, the EPA conducted emission testing using two different H&S products purchased by an EPA contractor. The first test was conducted on June 24-26, 2013, at a facility owned by Cummins Engine Company (Cummins) using an H&S Mini Maxx performance tuner installed on a 2012 Dodge Ram 3500 vehicle equipped with a Cummins 6.7 light heavy-duty diesel engine (LHDDE). The second test was conducted on December 2-6, 2013, at a facility owned by Ford Motor Company (Ford) using an H&S XRT Pro performance tuner installed on a 2011 Ford F-350 equipped with a Ford 6.7 L Powerstroke LHDDE Engine. As compared to baseline emissions testing, the test results identified a significant increase in emissions when Respondent's Defeat Devices were installed and the emission controls disabled or removed. The test results are summarized below.

Date of Testing	**Testing Facility**	**Vehicle Tested**	**Performance Tuner Tested**	**Summary Emissions Results [increase from baseline]**
June 24-26, 2013	Cummins Columbus, IN	2012 Dodge Ram 3500 Cummins 6.7 LHDDE	Mini Maxx Serial #: 0070041354	+813% NO_x, +3,062% NMHC, no CO results, +1,495% PM
December 2-6, 2013	Ford Allen Park, MI	2011 Ford F-350 Ford 6.7 L Powerstroke LHDDE	XRT Pro Serial #: 0060039934	+27,617% NO_x, +114,520% NMHC, +11,687% CO, 3,929% PM

The CAFO Would Serve the Public Interest

The CAFO serves the public interest because it contains specific, appropriate relief that is technically adequate to accomplish the goals of the Clean Air Act to protect the nation's air quality and enhance the productive capacity of its population. *See* 42 U.S.C. § 7401(b)(1); proposed CAFO ¶ 45. First, Respondent is prohibited from manufacturing and selling Defeat Devices. Second, the Defeat Devices remaining in Respondent's inventory and/or possession must be permanently destroyed. Third, Respondent cannot provide technical support pertaining to the use, manufacture or sale of Defeat Devices to any person, and cannot sell or otherwise transfer the design, technology, manufacturing processes or techniques, or intellectual property used to manufacture any Defeat Device. A significant penalty is associated with the violation of any of these terms. The CAFO does not require that the Defeat Devices be removed from the stream of commerce as Respondent's business is now defunct and without the capacity to implement a recall program.

This CAFO recoups a portion of Respondent's economic benefit of noncompliance, thereby remedying some of the unfair economic advantage gained over competitors. The penalty will also specifically deter Respondent, and generally deter others in the industry from committing similar violations in the future.

This CAFO requires Respondent to implement a project to mitigate the harm resulting from the use of the Defeat Devices by replacing, retrofitting or upgrading older, more polluting wood-burning appliances with newer, efficient wood-burning appliances, thereby reducing particulate matter emissions. This project is in the public interest and consistent with the objective of the Clean Air Act. Pursuant to Paragraph 45 of the proposed CAFO, Respondent will spend at least $400,000 on the project and replace, retrofit or upgrade at least 400 inefficient wood-burning appliances with more efficient wood-burning appliances. The project is required to be consistent with the materials available on EPA's Burn Wise website at http://www.epa.gov/burnwise, and no more than 10% of the $400,000 can be allocated for project administration and outreach. The project must be implemented in a geographical area of the United States that is, as of the date of issuance of the attached Final Order, designated by EPA as Nonattainment for PM_{10} and/or $PM_{2.5}$.

In sum, the CAFO achieves environmental benefits, without the time and expense of administrative litigation, by removing the supply of Defeat Devices into commerce, preventing the dissemination of the Defeat Device technology, and by offsetting excess emissions attributed to the use of the Defeat Devices. Furthermore, the civil penalty of $1,000,000, which is commensurate with Respondent's ability to pay, punishes Respondent, and sends a signal to the industry that the EPA will enforce the Clean Air Act's mobile source requirements.

EPA Delegations of Authority and Administrative Penalty Waiver

Phillip A. Brooks, Director of AED, is authorized to sign the CAFO on the EPA's behalf. Congress delegated to the EPA Administrator the authority to administratively assess civil penalties in lieu of a civil judicial action in matters involving penalties under $320,000 "unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment." CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1), 40 C.F.R. §§ 19.4, 1068.125(b); *see* 40 C.F.R. § 1068.101(h) (defining a violation of 40 C.F.R. § 1068.101(a) as being a violation of CAA §§ 203 and 213(d), 42 U.S.C. §§ 7522 and 7547(d), for which the administrative penalty cap has been adjusted for inflation).

The Administrator delegated the authority "to sign consent agreements memorializing settlements between the Agency and respondents" and to "represent the EPA in administrative proceedings conducted under the CAA and to negotiate consent agreements between the Agency and respondents resulting from such enforcement actions" to the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA AA). EPA Delegation 7-6-A; Delegation 7-6-B. The OECA AA redelegated these authorities to the Division Director level. Office of Enforcement and Compliance Assurance Redelegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redelegation 7-6-A (March 5, 2013). Thus, Phillip A. Brooks, Director of the AED, is authorized to sign a CAFO on the EPA's behalf.

Recommendation

I respectfully recommend that you ratify the Consent Agreement and issue the proposed Final Order. Please direct any questions to Phillip A. Brooks at (202) 564-0652 or Kathryn Caballero at (202) 564-1849.

Attachments:

A. Consent Agreement and Proposed Final Order
B. DOJ Concurrence with EPA's Decision to Proceed Administratively

cc: Barry Clarkson, Counsel for Respondent